

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**B. P. J., by her next friend and mother,  
HEATHER JACKSON,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 2:21-cv-00316  
Judge Joseph R. Goodwin**

**WEST VIRGINIA STATE BOARD OF  
EDUCATION, HARRISON COUNTY  
BOARD OF EDUCATION, WEST  
VIRGINIA SECONDARY SCHOOL  
ACTIVITIES COMMISSION,  
W. CLAYTON BURCH, in his official  
Capacity as State Superintendent, DORA  
STUTLER, in her official capacity as  
Harrison County Superintendent, and  
THE STATE OF WEST VIRGINIA,**

**Defendants.**

**and LAINEY ARMISTEAD,**

**Intervenor Defendant.**

**DEFENDANT STATE OF WEST VIRGINIA AND DEFENDANT-INTERVENOR  
LAINEY ARMISTEAD'S MOTION IN LIMINE TO BAR PLAINTIFF'S CLAIMS TO  
UNDISPUTED FACTS (FED. R. EVID. 105 AND 403)**

Defendant, State of West Virginia and Defendant-Intervenor Lainey Armistead, pursuant to Rules 105 and 403 of the Federal Rules of Evidence, move for an order *in limine* to restrict Plaintiff, B.P.J.'s, usage of stipulations, interrogatory answers, or admissions to only between the parties specified in such stipulations, admissions or answers in any assertion at trial, opening statement, or otherwise. Further, the State of West Virginia and Ms. Armistead move for an order

*in limine* to bar Plaintiff from referring to any facts as “undisputed” unless all parties have so agreed.

Based upon Plaintiff’s Statement of Undisputed Material Facts (“Plaintiff’s SUF,” ECF No. 290), the State of West Virginia and Ms. Armistead expect Plaintiff to improperly use stipulations between the Plaintiff and one or more other parties and/or responses to discovery requests from one party, as evidence as against all parties. This would violate Fed. R. Evid. 105.

The State of West Virginia and Ms. Armistead also expect Plaintiff to refer to facts from Plaintiff’s SUF as “undisputed” when they are, in reality, disputed. This is prejudicial in violation of Fed. R. Evid. 403.

Therefore, the State of West Virginia and Ms. Armistead respectfully request that their Motion *in Limine* be granted.

Respectfully submitted,

PATRICK MORRISEY  
*West Virginia Attorney General*

/s/ Curtis R. A. Capehart  
Douglas P. Buffington II (WV Bar # 8157)  
*Chief Deputy Attorney General*  
Curtis R.A. Capehart (WV Bar # 9876)  
*Deputy Attorney General*  
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*Counsel for Defendant, STATE OF WEST VIRGINIA*

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**Intervenor Defendant.**

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 22nd day of June 2022, I electronically filed the foregoing Motion with the Clerk of Court and all parties using the CM/ECF System.

/s/ Curtis R. A. Capehart  
Curtis R. A. Capehart